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April 26, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: December 27, 2005

Case Number: TSO-0340

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should be granted an access authorization.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and applied for a DOE access authorization in 2003. In April 2005, the DOE conducted a Personnel Security Interview with the individual (the 2005 PSI). In addition, the individual was evaluated in August 2005 by a DOE-consultant psychologist (the DOE-consultant psychologist), who issued a report containing his conclusions and observations.

In November 2005, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Sections 710.8(h) and (j) of the regulations governing eligibility for access to classified material. With respect to Criteria (h) and (j), the Manager finds that it is the opinion of the DOE-consultant psychologist that the individual had a period of excessive alcohol use from 1985 until 1994 and that he currently meets the Diagnostic and statistical Manual of the American Psychiatric Association, IV Edition TR (the "DSM-IV-TR") criteria for "Use of Alcohol Habitually to Excess", a condition

which causes, or may cause a significant defect in his judgment or reliability. The Notification Letter also refers to the following incidents involving the individual which are related to this diagnosis:

1. In October 1994, he was charged with "Challenging a Fight in a Public Place" after he became belligerent with hospital security. This incident took place while he was intoxicated. He was subsequently arrested in March 1995, after failing to appear for his arraignment in December 1994.
2. In November 1994, he was cited for "Driving Under the Influence" after he hit a parked vehicle with his motorcycle and injured himself seriously. This incident occurred after he rode the motorcycle about 20 miles while intoxicated in an apparent blackout condition.
3. In March 1993, he was arrested and charged with Malicious Mischief after he impulsively punctured the tire of an automobile with a buck knife. He was very intoxicated at the time of the incident.

Finally, the Notification Letter states that at his 2005 PSI, the individual stated that at age 17 or 18, a friend expressed concern about his alcohol use and convinced him to attend a meeting of Alcoholics Anonymous. He also stated that he did not return to AA because he believed that he did not have a problem with alcohol. At the 2005 PSI, the individual acknowledged that he has a problem with alcohol and experiences cravings to use alcohol. See Notification Letter Enclosure 2 at 1-2.

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. In his initial response to those concerns, the individual acknowledged that the alcohol related incidents in 1993 and 1994 were serious in nature, but he asserted that he has dealt with his alcohol problem and that no further incidents have occurred since that time. He further stated that although he disputed the finding that he currently is a user of alcohol habitually to excess, he is open to further rehabilitation. Finally, he stated that as of October 2, 2005 he has abstained from consuming any alcohol. Individual's December 7, 2005 Response to Notification Letter.

The requested hearing in this matter was convened in February 2006 (hereinafter the "Hearing"). At the Hearing, the testimony focused chiefly on the concerns raised by the individual's past

incidents involving alcohol in 1993 and 1994, and on the individual's efforts to mitigate those concerns by showing that he has avoided alcohol-related incidents since 1994, and, since October 2005, has basically abstained from consuming alcohol.

## II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

### A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance.

See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing* (Case No. VSO-0038), 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

#### *B. Basis for the Hearing Officer's Decision*

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

### *III. HEARING TESTIMONY*

At the Hearing, testimony was received from six persons. The DOE presented the testimony of the DOE-consultant psychologist. The individual presented the testimony of himself, his wife, his supervisor, a social friend from a weekly pool tournament, and a

social friend who works at the gun store patronized by the individual. 1/

A. *The DOE-consultant Psychologist*

The DOE-consultant psychologist testified that he evaluated the individual in August 2005. He stated that during his interview, the individual was cooperative, and that he answered all questions openly and honestly. TR at 17.

The DOE-consultant psychologist testified that after evaluating the individual, he concluded that the individual currently did not fit any category for diagnosis of alcohol disorders presented in the Diagnostic and statistical Manual of the American Psychiatric Association, IV Edition TR (the "DSM-IV-TR"). 2/ However, the DOE-consultant psychologist stated that the individual's history and current reported use of alcohol indicated an "habitual and excessive use of alcohol." TR at 21. He described this condition as follows.

Well, it's basically a pattern of drinking that is above and beyond what one would consider a normal level of alcohol use and certainly could affect or influence one's behavior in certain situations.

TR at 22. The DOE-consultant psychologist stated that at the time that he interviewed the individual in August 2005, the individual did not show adequate evidence of rehabilitation or reformation from this condition. TR at 23. He stated that the individual's current condition had the potential for impairing the individual's judgment and reliability. TR at 28.

The DOE-consultant psychologist stated that in his Report, he made some recommendations for how the individual could achieve rehabilitation.

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1/ As indicated by the testimony of the DOE-consultant psychologist (Hearing Transcript, "TR", at 11-12), his experience clearly qualifies him as an expert witness in the diagnosis and treatment of substance abuse disorders.

2/ He also stated that based on the individual's history of alcohol related legal problems in 1993 and 1994, during that period the individual had met the DSM-IV-TR criteria for alcohol abuse.

Well, I felt that he needed a period of treatment, and probably on an outpatient basis, to become more aware of his triggers for [alcohol] use, be better able to manage going to excessive use.

TR at 23-24. He stated that he suggested that one to three months of such treatment would be adequate. TR at 24. He testified that he thought that a program of some kind would benefit the individual because at the time of their interview, the individual stated that he was trying to be a "measured drinker", but that his efforts were not adequately controlling his drinking. TR at 38.

#### *B. The Individual*

The individual testified that he agreed with the statement of concerns set forth in the Notification Letter. TR at 66. However, he clarified that with regard to his March 27, 1995 incarceration cited in paragraph one of the statement of concerns, he was not arrested by the police, but voluntarily reported to the police station after he received a notice in the mail that he was subject to arrest for failing to appear for his arraignment in December 1994. TR at 61-64. With regard to the DOE-consultant psychologist's Report, he stated that he did not disagree with the diagnosis of drinking habitually to excess after 1994. TR at 67.

The individual stated that on October 2, 2005, he "made a conscious decision to just abstain from alcohol, period." Id. He explained that alcohol had "brought a lot of conflict and strife into my life." He cited negative effects of alcohol on

Social interactions, personal interactions, just the mores after one consumes a little to much, both the physical effects and the psychological effects. I hate to say in such flat terms, but I got tired of it.

TR at 67-68. The individual stated that he has had digestive issues within the last few years, and that alcohol exasperates them. 3/ TR at 68. He testified that he runs a weekly pool tournament at a local bar, and that he regularly observes other people becoming sillier and more aggressive as they consume alcohol over the course of an evening. TR at 69. He stated that the night before he decided to stop drinking, he had gone to a bar with his

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3/ The individual testified that he has never been advised by his doctors to refrain from using alcohol for medical reasons. TR at 84-85.

social friend and become too intoxicated to drive, so he had spent the night in his friend's guest room. TR at 46-47.

The next day, I just kind of decided I didn't want to drink anymore. I thought it had gotten annoying.

TR at 47. Finally, the individual noted that he made his decision to stop drinking before he received the Notification Letter and a copy of the DOE-consultant psychologist's Report. TR at 76.

The individual stated that he has consumed small amounts of alcohol on two occasions since he made his decision not to drink in October 2005. He stated that on New Years Eve, 2005, he and his wife attended a New Year's celebration, and he consumed a small glass of champagne at midnight that was included with the entry fee to the event. TR at 85-86. He testified that on February 25, 2006, he purchased a 40-ounce bottle of malt liquor after he and his wife attended a local festival together. He stated that he took the beverage home, consumed half of it, and discarded the remainder. TR at 49, 68.

The individual stated that he receives six coupons for free drinks at the bar where he runs the pool tournament once a week, and that he now uses these coupons to buy beverages for losing contestants. TR at 70. He testified that he has substituted club soda with lime for an alcoholic beverage at these tournaments, and that he has become aware of situations where he feels an urge to drink.

One of the more interesting things that I've been noticing about myself is that if I start to get stressed out and I start to feel like I want to have a beer or have a glass of scotch or a mixed beverage, I try to tell myself that that's the exact wrong reason for me to be wanting that beverage. It's very similar to the time when I quit smoking, when I had to recognize what were my triggers for desiring to have a cigarette, like after I ate or when I got up or had a cup of coffee or driving somewhere.

TR at 70. The individual stated that his wife is an "anchor" of support for his sobriety. TR at 74-75. He also asserted that "I'm very stubborn when it comes to a choice that I've made." TR at 76. He stated that he has no intention of reverting back to alcohol use. TR at 80.

The individual stated that he viewed the DOE-consultant psychologist's recommendations for out-patient treatment as his

professional opinion rather than a directive to be followed. TR at 79. He stated that the court-ordered alcohol treatment that he received in 1994 provided basic information about alcoholism and that he has done his own research on the internet. TR at 82. He also stated that his father's experience with alcoholism has helped him to understand the disease.

He's been sober - I don't recall if it's been 21 or 24 years, but he does run [Alcoholics Anonymous (AA)] speeches and meetings. He's very involved in that.

TR at 83. He stated that he has made a conscious choice that

I'm just not going to have that first drink. If you don't have the first drink, you won't have the second drink. So my focus is always on that first drink. I'm going to abstain from the first drink.

TR at 85.

#### *C. The Individual's Wife*

The individual's wife testified that she met the individual in 1990 or 1991, that they have lived together since 1994, and that they were married in 2002. TR at 60. She stated that they have a two school age children. TR at 61. She asserted that the last time she was aware that the individual was intoxicated was on October 1, 2005. That night, the individual called her to say that he was spending the night at a friend's home because he was too intoxicated to drive. TR at 50.

That was a Saturday. Sunday, when he came home, we had discussed some issues about what was going on in the household and how that incident had affected the kids - the kids had noticed he hadn't come home - and then he'd asked me for help, because he had realized that he had a drinking problem.

TR at 51. The individual's wife reported that the individual has consumed alcohol on two occasions since October 2, 2005. One was on New Year's Eve, when she stated that he consumed a single flute of champagne. The other was on February 25, 2006, when he consumed half of a 40-ounce bottle of malt liquor. TR at 49.

The individual's wife testified that in the early 1990's the individual drank "in excess" and "very often". She stated that the individual viewed his 1994 DUI and motorcycle accident as a wake-up



call and "from then on, it was more social drinking than anything."  
TR at 53.

We'd go to my sister's house for birthday parties, [the individual] and her husband would drink. I was always there, because I was always the designated driver. I don't drink that much.

TR at 53.

The individual's wife stated that the individual's reported drinking to the point of intoxication in April and June 2005 was triggered by the family separation that occurred when the individual was hired by his current employer. The individual resided alone in their new home for six months while his wife and children remained in another city to finish the school year and only visited on weekends. TR at 55-56.

She testified that she believes that the individual is committed to abstaining from alcohol for several reasons.

He knows the benefits of having this job. He knows the financial status that we're in right now. We have a house. There is a lot of responsibility that we have. He has just chosen to quit.

TR at 57. The individual's wife stated that she often is with the individual when he manages the pool tournament at a local bar, and that since October 2005, he chooses to abstain from alcohol on those occasions and is not bothered being around people who drink. TR at 54. She stated that she and the individual do not keep alcohol in their home. TR at 50.

#### *D. The Individual's Social Friend from the Pool Tournament*

The individual's social friend from the pool tournament testified that he has known the individual for about one year, and that he is a regular participant in the weekly pool tournament that the individual manages at a local bar. TR at 41. He confirmed that on the night of October 1, 2005, the individual told him that he felt too intoxicated to drive, and asked to spend the night at his home. TR at 42-43. He stated that since October 1, 2005, he has not observed the individual consume alcohol. TR at 42. He testified that he sees the individual about four nights a week, either at the bar where they play pool or at the gun store where he works. TR at 43.

*E. The Individual's Other Social Friend from the Gun Store*

The individual called another social friend who also works at the gun store patronized by the individual but does not participate in the pool tournament. He stated that he has known the individual for about one year, and that he sees the individual most days of the week. He stated that the individual is a member of the gun range operated by his store and he will visit the store on Saturdays and on some weekdays for target practice. TR at 95-96.

He testified that the individual will come by the gun store and talk with him, and then they will meet at a local bar for more conversation. TR at 93-94. He confirmed that the individual always drinks soda water with lime when they socialize at the bar.

He usually sits right next to me, and I have never witnessed him drinking an alcoholic beverage, at least in the past nine or ten months.

TR at 94. He stated that in February 2005, he recalled the individual consuming a portion of an alcoholic beverage. TR at 94. He stated that he is aware that the individual has made a decision to stop drinking and that "he's done a very good job of it." TR at 94-95.

*F. The Individual's Supervisor*

The individual's supervisor testified that he has worked with the individual ever since the individual was hired by the DOE contractor in 2003.

We were technical support in one area, but my assignment changed with I became a team lead, and I had the ability to recruit folks, and shortly after becoming the lead, I was able to recruit [the individual] over to my area.

TR at 100. He stated that in addition to working with and supervising the individual, he occasionally has lunch with the individual. TR at 101. He stated that he has never observed the individual consume alcohol. TR at 101-103. He stated that the individual is very reliable in the workplace and has never been absent or tardy in a manner that suggested a drinking problem.

I believe if he'd had any type of an issue [with alcohol], it would have surfaced and impacted what he's done here, but I can tell you that he's been one of my

most reliable team members, and he excels in what he does.

TR at 102.

*G. The DOE-consultant Psychologist's Follow-Up Testimony*

After hearing the testimony of the individual and the other witnesses, the DOE-consultant psychologist stated that there were new and positive insights in the testimony that affected his diagnosis and his recommendations for the individual.

Well, I'm coming to the conclusion that my concerns that I had outlined in my report have been addressed . . . and I feel the need for a treatment program is not necessarily there.

TR at 106-107.

The DOE-consultant psychologist stated that his previous concerns that the individual was unsuccessful in his efforts to be a measured drinker, that he was having cravings, and that he was relying on his wife for help in monitoring his drinking had been addressed by the individual's decision to stop consuming alcohol. *Id.* He stated that he was impressed by the individual's decision to stop drinking before he received the DOE-consultant psychologist's diagnosis and recommendations, and that he believed that the individual's assertion that he was sick and tired of dealing with the effects of alcohol indicated a sincere motivation to quit. TR at 107-108. He stated that he would view the individual's two instances of alcohol consumption after October 1, 2005 as slips rather than relapses.

I think the bottom line, of course, is whether the [individual] is having these intoxication episodes, and it doesn't sound like he's having those any longer and has made a real conscious and sincere effort to not get to that point [of intoxication] any more.

TR at 108.

The DOE-consultant psychologist described the individual's prognosis for avoiding future intoxication as "very good" based on listening to the individual's wife and other witnesses. *Id.* He stated that the individual's current support system is adequate to support a finding of rehabilitation and reformation from drinking alcohol habitually to excess. He noted that the individual has

exhibited "some basis for understanding alcohol abuse and its effects" from his court ordered alcohol education and information program in 1994. He viewed the individual's awareness of the negative effect of alcohol on his gastrointestinal problems as a factor discouraging a "return to any level of drinking." TR at 110. Finally, he cited the individual's father's experience with AA and the individual's wife's "ongoing and immediate support" as indicating the individual's support system is adequate without additional treatment. TR at 110.

The DOE-consultant psychologist concluded that in light of the individual's "very sincere and conscious decision" in October 2005 not to engage in excessive alcohol use in the future, and his success since then in avoiding intoxication,

I would say that substantially the percentages are in his favor of not relapsing.

TR at 114.

#### IV. ANALYSIS

The individual asserts that he has acknowledged and learned from his past problems with alcohol, and that since March 1995 he has avoided any alcohol-related legal problems. The individual further asserts that, since October 2, 2005, he has made a personal commitment to abstain and that since that time he has only consumed small amounts of alcohol on two occasions. He contends that his actions mitigate the Criteria (h) and (j) concerns arising from his diagnosis of "User of Alcohol Habitually to Excess." For the reasons stated below, I conclude that the individual's assertions and supporting evidence do mitigate these security concerns.

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychologists and other mental health professionals regarding rehabilitation and reformation. See, e.g., *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation).

The testimony at the Hearing indicates that beginning on October 2, 2005, the individual has abstained successfully from consuming from any alcohol with the exception of (i) a flute of champagne consumed on December 31, 2005 and (ii) half of a 40-ounce bottle of malt liquor consumed on February 25, 2006. In the context of his diagnosis of "User of Alcohol Habitually to Excess", I accept the DOE-consultant psychologist's characterization of the individual's two instances of alcohol use since October 2, 2005 as slips rather than relapses that do not significantly affect his prognosis for future alcohol problems.

At the Hearing, the DOE-consultant psychologist concluded that the individual's demonstrated awareness of his problems with alcohol, and his success in avoiding alcohol intoxication since October 2, 2005 indicated that he had demonstrated rehabilitation and reformation from his diagnosis of "User of Alcohol Habitually to Excess". I agree with the DOE-consultant psychologist's conclusions. My positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the individual has avoided consuming alcohol to excess since October 2, 2005. I also find that the individual has committed himself to sobriety, and that he has shared his commitment to sobriety with his wife, his father and one of his social friends. Finally, the individual has demonstrated an ability to conduct his social and recreational activities without alcohol. These positive developments are all significant factors which demonstrate rehabilitation and reformation from his former problem with alcohol intoxication. I also accept as reasonable the DOE-consultant psychologist's professional opinion that the individual is at low risk for relapsing into excessive consumption of alcohol. In light of all of these factors, I find that the individual has mitigated the DOE's Criteria (h) and (j) concerns.

#### V. CONCLUSION

For the reasons set forth above, I find that the Notification Letter's derogatory information under Criteria (h) and (j) has been mitigated by sufficient evidence of rehabilitation and reformation from past instances of excessive alcohol consumption. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual should be granted an access

authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: April 26, 2006